

STATE OF VERMONT
PUBLIC SERVICE BOARD

Docket No. 7077

Joint Petition of all Vermont affiliates of)
Adelphia Communications Corporation and Time)
Warner Cable Inc. for: (1) consent to sell)
substantially all of Adelphia's Vermont assets to)
Cable Holdco Exchange III LLC; (2) approval of)
such affiliates' abandonment of cable television)
service in Vermont; and (3) revocation of he)
affiliates' Certificates of Public Good; AND **Joint**)
Petition of Time Warner Cable Inc. and Cable)
Holdco Exchange III LLC for a Certificate of)
Public Good for Cable Holdco to own and operate)
said cable television systems; AND **Joint Petition**)
of Time Warner Cable Inc. and Comcast of)
Georgia, Inc. for authority to acquire control of)
Cable Holdco Exchange III LLC.)

**PREFILED TESTIMONY OF
DEENA L. FRANKEL
ON BEHALF OF THE
VERMONT DEPARTMENT OF PUBLIC SERVICE**

September 2, 2005

Summary: The purpose of Ms. Frankel's testimony is to provide the overall recommendation of the Department of Public Service, to assess the petition with respect to the customer service-related criteria for receiving a CPG, and to make recommendations concerning CPG conditions related to customer service.

Prefiled Testimony
of
Deena L. Frankel

1 Q. Please state your name and occupation.

2 A. My name is Deena L. Frankel, and I am the Director for Consumer Affairs &
3 Public Information for the Vermont Department of Public Service (Department or DPS).

4
5 Q. Please state your educational background and professional experience.

6 A. I attended Florida State University, majoring in mass communications. I hold an
7 MA in Conflict Resolution from the McGregor School of Antioch University, and a
8 professional certificate in Mediation and Conflict Resolution from Woodbury College. I
9 completed the Vermont Leadership Institute of the Snelling Center for Government in
10 2005. Prior to coming to Vermont in 1994, I worked for 17 years in Florida and
11 Connecticut at the state and local levels in the fields of consumer and disabilities research
12 and advocacy, organizational development and marketing. Between 1994 and 1997, I
13 owned and operated an organizational development consulting firm based in Montpelier.
14 I have over twenty years of management experience, including grants management,
15 contract supervision and administration in both large and small organizations. From 1996
16 through 2001, I also served as an adjunct faculty member in the Woodbury College
17 Mediation and Conflict Management Program.

18
19 Q. What are your responsibilities in your current position?

20 A. I am responsible for administering the Department's Consumer Affairs & Public
21 Information Division (CAPI). CAPI is responsible for resolving consumer complaints
22 against regulated utilities and cable companies, advocating for policies which protect
23 consumer interests and educating consumers about utility issues so they can more
24 effectively advocate for themselves. I supervise a staff of four consumer advocates,
25 represent the Department in policy, legislative and public information initiatives related

1 to consumer issues, and carry out the Department's administrative responsibilities with
2 respect to Vermont's Universal Service Fund.
3

4 Q. What is the purpose of your testimony?

5 A. The purpose of my testimony is to provide the overall recommendation of the
6 Department of Public Service, to assess the petition with respect to the customer service-
7 related criteria for receiving a CPG, and to make recommendations concerning CPG
8 conditions related to customer service. I will also explain the organization of the
9 Department's testimony, including describing what issues are addressed by each
10 Department witness.
11

12 Organization of the Department's testimony

13 Q. How is the Department's testimony organized?

14 A. The Department's testimony is sponsored by four witnesses. Each witness
15 addresses one or more of the criteria in 30 V.S.A. § 504 and the EMCO criteria in Public
16 Service Board Rule 8.214 for determining the qualification of a cable company to receive
17 a Certificate of Public Good (CPG). Each witness also analyzes certain conditions within
18 the CPG proposed by the petitioners, and proposes CPG conditions that are necessary for
19 the transaction to serve the public good. The division of topics among the witnesses is as
20 follows:

- 21 • The testimony of Lawrence Lackey, as a consultant to the Department, addresses
22 the structure of the proposed transaction, all issues related to line extensions, and
23 all issues related to Public, Educational and Government (PEG) Access.
- 24 • The testimony of Susan Martin, Utilities Financial Analyst for DPS
25 Telecommunications Division, assesses the financial capability of the petitioners
26 and addresses those CPG criteria related to financial health of the applicant.
- 27 • Ben Truman, Senior Consumer Affairs & Information Specialist with the DPS
28 CAPI Division, proposes a specific Service Quality Plan as a CPG condition in
29 order ensure the petitioner meets customer service-related CPG criteria.

- 1 • As I have previously stated, my testimony includes the Department's overall
2 recommendation, as well as analysis and recommendations for CPG conditions
3 related to customer service and the adequacy and quality of the cable systems
4 Comcast will operate.

5
6 Exhibit DPS-DLF 1 consists of a table showing which DPS witnesses are
7 addressing each criterion for granting a CPG contained in Vermont law and rules. Exhibit
8 DPS-DLF 2 consists of a table presenting: (1) the CPG conditions proposed by Comcast;
9 (2) DPS's recommendation concerning each condition including alternative language
10 where applicable; (3) additional conditions recommended by DPS that were not included
11 in Comcast's proposed CPG, and (4) and indication of which DPS staff person's
12 testimony addresses each condition.

13
14 Summary of DPS overall recommendation

15 Q. What is the Department's overall recommendation with regard to the petition in this
16 docket?

17 A. In the current docket, the petitioners are seeking approval of a multi-part
18 transaction that involves acquiring essentially all of Adelphia's Vermont assets,
19 revocation of Adelphia's CPG, and the granting of a new eleven-year CPG to the new
20 entity. (The structure of the transaction is discussed in detail in the testimony of Mr.
21 Lackey.) If approved, the new CPG will result in a new cable operator for the more than
22 110, 000 Vermont subscribers currently served by Adelphia, who represent more than 80
23 percent of all Vermont cable customers. This is a significant change that requires careful
24 scrutiny to ensure the public good is served by the transaction.

25 Adelphia has had a long and problematic history in Vermont, characterized by
26 considerable conflict over regulatory compliance and fulfillment of its service
27 obligations. Multiple dockets have resulted in an accumulation of conditions, some of
28 which have been created specifically to meet the particular regulatory challenges posed
29 by Adelphia and to bring them into compliance with their obligations. Conditions have

1 certainly improved since the bankruptcy in the relationship between Adelphia and
2 regulators, but the company's presence in Vermont cannot yet be viewed independently
3 of the historical context.

4 Comcast¹ brings no such history to the state and instead can be said to have a
5 clean slate. As they seek to do business here, Vermont should have no presumption for or
6 against them in terms of their capability or willingness to fulfill their obligations, provide
7 good service to their customers, offer up-to-date products and services, and comply with
8 Vermont's regulatory requirements. At the same time, because of the nature of the
9 transaction, which places legal and practical limits on the ability of the acquiring parties
10 to make post-transaction business plans, the petitioners have offered little to Vermont to
11 describe what we can expect service to look like following full transition from Adelphia
12 to Comcast. This poses a challenge in evaluating whether granting a CPG to Comcast
13 serves the public good. That challenge is further complicated by the fact that Comcast is
14 seeking an 11-year CPG essentially under the same conditions that now apply to
15 Adelphia, without the review that otherwise would have happened six years from now
16 when the current CPG for the majority of Adelphia's territory expires in 2011. These
17 challenges leave Vermont regulators in the position of evaluating the current petition on
18 the basis of the conditions Comcast has offered in its draft CPG and its business
19 reputation in other states.

20 The Department's review of Comcast's performance in other states indicates that
21 the company has the capability to operate in Vermont as a cable company. It is by far the
22 largest cable operator in the US² with approximately 22 million video subscribers, 7
23 million high speed internet subscribers, and 1 million phone subscribers at the end of

¹I refer here and throughout my testimony to Comcast, rather than Holdco. Mr. Lackey discusses in detail the Department's concerns regarding the structure of the transaction and the small possibility that, as structured, the proposed transactions will not result in Comcast operating the cable system. The use by all Department witness of Comcast to refer to the CPG holder is consistent with the CPG proposed by the petitioners and should be read in light of Mr. Lackey's recommendation concerning conditioning any CPG on Comcast's ultimate acquisition of Holdco.

²http://www.ncta.com/industry_overview/top50mso.cfm?PageID=327

1 2004.³ It has enjoyed significant growth in the recent past, adding both subscribers and
2 services in 2004 alone.⁴ It is reasonable to assume that its status in the industry and its
3 gains as a company reflect the capability to operate a large cable system in Vermont.

4 We turn then to the question of how Comcast will operate in Vermont. To answer
5 this question without the submission of a detailed plan for the future, Comcast has
6 proposed a CPG in which it has agreed to accept the vast majority of the conditions that
7 currently apply to Adelphia through Dockets including 6101/6223, 6445, 6656/6877, and
8 6778. In general, the Department's investigation suggests that, with the acceptance of
9 these conditions, Comcast can be expected to meet the criteria for a cable CPG. There
10 are, however, a number of areas where DPS finds that the proposed CPG is insufficient to
11 address the current circumstances, where Comcast has omitted essential conditions under
12 which Adelphia currently operates, or where modifications are needed in light of changes
13 since the earlier CPGs were drafted and granted. In these areas, which are several but not
14 numerous, DPS proposes new or modified conditions. DPS believes that, with these
15 restored, added or modified CPG conditions, granting a CPG to Comcast will serve the
16 public good of Vermont and such a certificate should be granted. These additions and
17 modifications will be discussed throughout the testimony of DPS witnesses.

18 As I have stated, and Mr. Lackey discusses in detail, the structure of the proposed
19 transaction also presents a challenge to the current process. The petitioners seek Board
20 approval to transfer the Adelphia Vermont assets to Holdco, which is controlled by Time
21 Warner, and also Board approval to transfer control of Holdco to Comcast. Petitioners
22 indicate they intend the latter transaction to occur contemporaneously. However, they
23 also indicate there remains the possibility, albeit small according to the petitioners, that
24 the final transaction will not be consummated. Should that occur Time Warner and not
25 Comcast would ultimately be the operator of the current Adelphia Vermont system.
26 However, DPS is not satisfied that Time Warner seeks, or is prepared, to operate the

³Comcast 2004 annual report, page 22.

⁴Comcast 2004 annual report, p. 8.

1 Vermont system and is concerned that if this possibility were to come to fruition, there
2 would be substantial resulting uncertainties and risks for Vermont consumers such that
3 DPS would not conclude that the transaction, under those circumstances, would serve the
4 public good. Therefore, as proposed in detail by Mr. Lackey, DPS recommends any
5 approval of the asset sale in this docket be conditioned upon the sale occurring
6 contemporaneous with transfer of control to Comcast. Nevertheless, DPS may
7 reconsider this position if Time Warner is able to satisfy our concerns.
8

9 Q. What is DPS's recommendation concerning the treatment of the performance bond
10 requirement that exists in Adelphia's CPG in any CPG issued to Comcast in this docket?

11 A. Comcast has included most, but not all, conditions from the existing Adelphia
12 CPGs and other Board orders in its proposed CPG. Comcast's does not include the
13 performance bond requirement in its proposal.

14 The Department recommends the Board accept the omission of the performance
15 bond requirement from any CPG issued to Comcast with respect to ensuring the
16 fulfillment of the general conditions of the CPG. This distinction is intended to separate
17 the performance bond from the specific financial consequences tied to the line extension
18 requirements and penalty miles contained in Condition 36, which Comcast has included.

19 The performance bond requirement the Board placed on Adelphia in Docket
20 6101/6223 was an extraordinary measure that was "earned" by Adelphia through years of
21 violations and enforcement actions. In a sense, the performance bond was a last resort
22 after other measures had not worked. A company newly entering the Vermont market
23 should not be subject to a presumption that such extraordinary measures are necessary.
24 Other tools are available to deal with ordinary compliance issues that are part of the
25 normal relationship between regulated companies and regulators where those issues are
26 not part of a sustained and intractable pattern as they were with Adelphia. First, the
27 negotiation of issues without the need for formal regulatory action is the most efficient
28 means of addressing compliance problems and is effective in the majority of cases.
29 Second, where regulatory matters cannot be negotiated, Title 30 V.S.A. § 30 provides

adequate enforcement power to the Board to secure compliance. With these tools at regulators' disposal, there is no need to impose a performance bond requirement on a company, such as Comcast, that has not engaged in behavior warranting such a measure. For these reasons, DPS recommends the Board accept Comcast's omission of the performance bond requirement from any CPG the Board may issue to the company, while retaining the penalty miles provisions of proposed Condition 36.

Criteria addressed in my testimony

Q. Which criteria for granting of a CPG will your testimony address?

A. My testimony will address the degree to which the petitioners meet the following criteria:

- EMCO 2, the present proposed service offerings to customers, including the number of channels and the ability and capacity of the system to offer additional varied services in the future, and the ability to provide public access. (Mr. Lackey will address the aspects of this condition that deal with PEG access.)
- 30 V.S.A. § 504 (c)(1), a reasonable quality of service for basic, premium or otherwise, having regard to available technology, subscriber interest and cost. Ben Truman will discuss the portion of this criterion that is addressed by inclusion of a service quality plan in the CPG.
- 30 V.S.A. § 504 (c)(3), a competent staff sufficient to provide adequate and prompt service and to respond quickly and comprehensively to customer and Department complaints and problems
- 30 V.S.A. § 504 (c)(4), unless waived by the board, an office which shall be open during usual business hours, have a listed toll-free telephone so that complaints and requests for repairs or adjustments may be received.
- 30 V.S.A. § 504 (c)(5), reasonable rules and policies for line extensions, disconnections, customer deposits and billing practices.
- EMCO 6, consumer policies, particularly re: complaints and problems. Ben Truman will address certain aspects of this criterion.

- 30 V.S.A. § 504 (b)(4), the prohibition of discrimination among customers of basic service.

Q. Provide your assessment of the petition and proposed CPG in relation to EMCO criterion 2, "the present proposed service offerings to customers, including the number of channels and the ability and capacity of the system to offer additional varied services in the future, and the ability to provide public access." (Mr. Lackey will address the aspects of this condition that deal with PEG access.)

A. Comcast's proposal is that its systems, facilities and service offerings will remain as currently provided by Adelphia following the acquisition. DPS sought through extensive discovery to understand what channels and services would be offered by Comcast in the future. Virtually all questions regarding future services were answered by referring to the following general response:

Due to the early stage of the transactions and the complexity of the task of implementing and completing them, the planning process has only just begun and is extraordinarily time-consuming. Accordingly, some of Comcast's answers will be that there are no current plans on the subject matter because such plans have not been addressed yet.⁵

In addition to this response, the petitioners also frequently cited legal restrictions associated with anti-trust law that limited the ability of Adelphia and Comcast to communicate concerning how to integrate Adelphia's system with Comcast's following acquisition. It is clear that Comcast will integrate Adelphia's system with its systems in terms of service offerings, as well as other aspects the business. Beyond the initial, brief post-acquisition period, during which Comcast will operate the system it acquires from Adelphia and continue its service offerings and practices, it has been impossible to

⁵Comcast "General Response" to DPS interrogatories, sets 1, 2 and 3.

1 ascertain precisely what the result will be for Vermont consumers. Further, Comcast has
2 repeatedly reserved the right to make changes after acquisition.

3 As a consequence of the limitations, restrictions and reservations described
4 above, the Department's assessment of the transaction has of necessity been based on two
5 kinds of information that are available. First, since the existing channels, services and
6 facilities of Adelphia represent the product that will be delivered to consumers following
7 acquisition, it is reasonable to judge the adequacy "the present proposed service offerings
8 to customers, including the number of channels and the ability and capacity of the system
9 to offer additional varied services in the future" in part on the basis of Adelphia's existing
10 services and physical plant. Since these services currently qualify for a CPG, it is
11 reasonable to conclude that the same capability and offerings, when owned and delivered
12 by a new entity, if that entity is qualified to operate a cable system, would similarly meet
13 the criterion in question, at least to the degree that Comcast accepts the full range of
14 conditions the Board imposed upon Adelphia.⁶

15 The second kind of assessment DPS performed in evaluating the petitioners'
16 proposal was a review of Comcast's operation in the territories where it currently holds
17 franchises. In particular, DPS focused much of its assessment on Comcast's offerings in
18 the other New England states. Performance in other states cannot assure performance in
19 Vermont in the absence of specific commitments, and Comcast has not made any specific
20 commitments to offer packages or rates offered in other franchises, its performance
21 elsewhere gives an indication of its track record and business model.

22 Adelphia currently offers a wide variety of cable entertainment programming
23 through its basic service, its "standard" service, and premium offerings. Since it
24 completed the upgrade of all systems except Newport to 750 MHz, Adelphia has begun
25 offering a range of advanced services, including as Video on Demand (VOD), Pay Per

⁶This conclusion is qualified, however, by the fact that Comcast is seeking a CPG that will extend five or six years beyond the present expiration date of the Docket 6101 CPGs. This point is relevant in that conditions that are reasonable now, may not be reasonable beyond 2011. This point is relevant to recommendations of the Department I discuss on page 10 and Mr. Lackey discusses in his testimony concerning the Newport system.

1 View (PPV), digital cable, High Definition television (HDTV), Digital Video Recorders
2 (DVR) and broadband high-speed internet. Although it does not currently offer telephony
3 (other than long distance resale), Adelphia's upgraded system is technically capable of
4 offering such services.⁷ Adelphia's current offerings and capability meet the requirements
5 of EMCO 2, and qualified for a CPG in Docket 6101/6223 as such.

6 Comcast has represented that its acquisition of Adelphia's system will
7 substantially increase the offerings available to Vermont consumers.⁸ Analysis shows
8 that Adelphia is already offering all but one of the services Comcast delivers in its
9 existing New England franchises. While Comcast's claims of expanded offerings to
10 consumers may be true for systems they acquire that are not yet upgraded to 750 MHz,
11 Adelphia's Vermont systems are already upgraded and subscribers enjoy similar benefits
12 to those offered by Comcast. As indicated in response to Interrogatory DPS:PET.3-4, all
13 Adelphia systems are currently capable of offering advanced services and Adelphia
14 offers all the advanced services currently offered by Comcast except digital voice
15 service. There is, of course, no guarantee that Comcast will offer digital voice in
16 Vermont, but it indicates it intends to offer the product in all markets by 2006.⁹ Although
17 Comcast's claims may be exaggerated in relation to the new services that can be expected
18 in the Vermont market, Comcast appears to be aggressive in its roll-out of VOD, and to
19 be aggressive in increasing its cable entertainment offerings in other advanced services,
20 as well as its high-speed internet service. Based on DPS's analysis of Comcast offerings
21 in other franchise territories, there is no reason to conclude, following full transition to
22 Comcast management and service delivery that the "number of channels and the ability
23 and capacity of the system to offer additional varied services in the future" will be
24 inconsistent with EMCO 2.

⁷Mr. Lackey's testimony discusses the limitations for Newport consumers of that system not being rebuilt to 750 MHz, and recommends a CPG requirement to ensure Newport is not left behind.

⁸See for example the testimony of Stephen Hackley on behalf of Comcast, June 20, 2005, pp. 11-15.

⁹Response to Interrogatory DPS:PET.2-15.

1 Q. Has Comcast omitted conditions from its draft CPG that were imposed upon Adelphia
2 and are relevant to the ability of Comcast's petition to be consistent with EMCO 2?

3 A. Yes, Comcast has omitted three conditions to which Adelphia was subject that are
4 relevant to EMCO 2. They are all conditions that appeared in the CPGs granted in Docket
5 6101/6223. They include Condition 2 concerning FM rebroadcast, Condition 7
6 concerning provision of a channel with primarily Vermont-related programming, and
7 Condition 55 concerning advance notice to the Board, DPS, towns and AMOs of planned
8 rebuilds and upgrades. It is my understanding that the first two were omitted intentionally
9 and the last was an inadvertent omission.

10
11 Q. Is the FM rebroadcast condition important to your assessment of whether or not the
12 petition meets the requirements of EMCO 2?

13 A. Yes, I believe the requirement for FM rebroadcast is important to this assessment
14 and should be included in any CPG granted to Comcast. Comcast has not provided a
15 proposal of its own for the services to be offered to customers following acquisition.
16 Instead, as I discussed earlier, it asks the Board to grant a CPG on the basis of the
17 offerings of Adelphia and the business reputation and track record in other jurisdictions
18 of Comcast. Since the company is not proposing a package of its own service offerings, I
19 conclude that, in order to use Adelphia's services as the qualification for receiving a
20 CPG, it must offer the services that Adelphia offers.

21 Adelphia currently offers FM rebroadcast in Bennington, Brattleboro, Lebanon,
22 New Hampshire (serving Hartland, Vermont, Hartford, Vermont and Norwich, Vermont
23 areas), Montpelier, Newport, Rutland, Springfield and Williston. This is a service in
24 which Adelphia pulls in FM signals it can get off the air at its head end and rebroadcasts
25 these signals so they can be accessed via cable connected to a radio.

26 The restoration of FM rebroadcast was a hard-fought battle in Docket 6101 that
27 arose because Adelphia had eliminated FM rebroadcast without customer or Board

1 notification, resulting in consumer complaints to DPS. The service is uniquely important
2 to Vermont consumers because of the topography of the state. In some areas of Vermont
3 the topography severely limits FM radio reception. FM rebroadcast is useful because it
4 allows these and other consumers to obtain strong signals from Vermont-based FM
5 stations that they cannot otherwise pull off the air. While cable companies may offer
6 radio packages, selling syndicated or radio network programming is not a substitute for
7 FM, which is a very local medium that helps create a sense of community. National radio
8 programming does not, for example, broadcast school closings, local sports results, local
9 news or other specifically local programming, whereas this is precisely the content of FM
10 radio.

11 In this case, Comcast is not proposing to eliminate FM rebroadcast, but wants the
12 flexibility to do so in the future by eliminating the requirement from the CPG conditions.
13 See Exhibit DPS-DLF 1, DPS:PET.2-1. The company argues that the original Adelphia
14 condition was to "restore" FM rebroadcast, which has been done now, with no change to
15 be made on day one following acquisition. Further the company states that, "[u]nder
16 Vermont law, it may not remove FM-rebroadcast services ... without 45 days' advance
17 notice to the Board and the Department."¹⁰ Upon such notice, the Board could investigate
18 the removal. The problem with this approach is that it places the onus on DPS to seek
19 and/or the Board to open an investigation in order to object to the removal of a service
20 that was deemed an essential component of Adelphia's qualification for its CPG.

21 I understand the company's desire for the flexibility to revisit the issue of FM
22 rebroadcast without requiring a CPG amendment to do so. However, the company has set
23 the bar too low for the removal of the service. I propose an alternative that strikes a
24 middle ground, giving the company some flexibility to revisit the condition without
25 making a company decision to remove FM rebroadcast at some future time virtually
26 automatic absent affirmative action by the Department or Board. Further the proposed

¹⁰Response to Interrogatory DPS:PET.2-1.

1 alternative establishes a criterion by which to evaluate a company request to eliminate
2 FM. The following CPG condition would achieve that end:

3 Comcast shall continue to provide FM radio rebroadcast service in all
4 systems in which it was provided by Adelphia at least at the level
5 provided by Adelphia prior to acquisition. Elimination of FM radio
6 rebroadcast shall require affirmative permission of the Public Service
7 Board in response to a petition by the Company showing that Vermont
8 customers will not be adversely affected by the removal of the service.
9 The company shall ensure that customer service personnel who handle
10 Vermont calls have sufficient training to respond effectively to customer
11 inquiries about FM rebroadcast. Information about FM rebroadcast shall
12 be included in Comcast's annual notice of services and any other listing of
13 services Comcast may maintain or disseminate through any print,
14 broadcast or other electronic medium.

15
16 The foregoing recommended condition would resolve the defect in Comcast's
17 proposed CPG with regard to this aspect of the EMCO 2.

18
19 Q. Is the availability of a channel with primarily Vermont-related programming, as was
20 required in Adelphia Condition 7, important to your assessment of whether or not the
21 petition meets the requirements of EMCO 2?

22 A. Yes, as in the case of FM rebroadcast, Comcast has based its qualifications for a
23 CPG on the fact that it intends to continue Adelphia's current services, yet it proposes to
24 remove a service that was essential to the granting of Adelphia's CPG, namely a channel
25 programmed with primarily Vermont-related content.

26 The public interest is served by the Adelphia channel in that it provides fairly
27 extensive, Vermont-specific programming. The programming schedule for the channel

1 shows that in a typical week, Adelphia offered more than 40 time slots of an hour or half
2 hour filled with local programming, including sporting events such as area basketball and
3 hockey games; local talk shows such as *Carol and Tony*; *The Law and You*, a joint
4 production of the Vermont Bar Association and the Adelphia Channel; cultural programs
5 such as the Vermont Fiddlers Orchestra and the Mud Season Talent Show; programs
6 aimed at seniors such as COVE Specials; and religious programming, specifically the
7 Mass of the Catholic Diocese of Vermont.¹¹

8 There are no formal measures of viewership of the Adelphia channel because
9 Neilson and Arbitron do not measure its popularity, nor has Adelphia used any other
10 systematic means to gauge interest. Adelphia states, "[w]hile the popularity of such
11 [Adelphia channel] programming is not measured, Adelphia believes these programs
12 have unique local content and are of interest to Adelphia's viewers."¹² Adelphia further
13 reports that the net cost of the channel in 2004 was approximately \$58,000.

14
15 Q. Has Comcast refused to offer a channel like the Adelphia channel if it is granted a CPG?

16 A. Like all other aspects of programming, Comcast has stated it will make no change
17 upon acquisition, although it indicates it likely will have to change the name of the
18 Adelphia Channel to the Comcast Channel because it will lack the rights to use the
19 Adelphia name.¹³

20 Although Comcast has not stated its ultimate intentions with regard to a channel
21 with primarily Vermont-based programming, it objects to a CPG condition requiring it to
22 offer such a channel. Consequently, unlike Adelphia, which was obligated to offer the
23 Adelphia channel at least until the expiration of its Docket 6101/6223 CPGs in 2011,
24 Comcast could eliminate the channel at any time.

¹¹Response to Interrogatory DPS:PET.1-70.

¹²Id.

¹³Response to Interrogatory DPS:PET.1-22.

1 Comcast has implied that its equivalent offering to the Adelphia channel is CN8,
2 its New England regional channel. It is difficult to compare the programming information
3 provided by the petitioners for the Adelphia Channel and CN8, since Adelphia has
4 clearly labeled local programming on its channel, but Comcast has not done so for CN8.
5 It does not appear that CN8 contains the same kind of shows of local interest, but a
6 conclusive comparison is not possible. Comcast's "Public Interest Statement" describes a
7 range of local programming in larger markets that include cultural, sports, health, news
8 and other local features, as well as an emphasis on regional sports coverage in larger
9 markets such as Philadelphia and the mid-Atlantic.¹⁴

10 Comcast wants the Board and Department to rely on its track record and good
11 intentions, rather than a CPG condition, to ensure reasonable availability of Vermont-
12 related programming. It does not want to be held to a requirement to offer a Vermont-
13 specific channel, and implies that a regional channel like CN8 fits the bill. We are
14 concerned that, when Vermont's cable system becomes one small part a New England
15 system with extensive franchises, including many far more populous southern New
16 England and New Hampshire markets, Vermonters will not get their fair share of state-
17 specific/local programming on a regional channel absent some specific assurance
18 provided in the CPG. Loss of some equivalent of the Adelphia Channel – which is not
19 preordained but is possible without a specific CPG condition – would represent a
20 significant loss of value to Vermont consumers. For these reasons, retaining a
21 requirement for a primarily Vermont-related channel or some other means of achieving
22 such a channel's objective is essential to meeting EMCO 2.

23 To remedy the absence of a relevant condition in Comcast's proposed CPG, I
24 recommend the Board include in any CPG granted to Comcast under this proceeding the
25 following condition, which tracks the former Adelphia Docket 6101 Condition 7:

¹⁴ Applications and Public Interest Statement of Adelphia, Comcast and Time Warner, May 18, 2005, Attachment A.DPS:PET.1-8, pp. 40-42.

1 Comcast shall provide a channel with primarily Vermont-related
2 programming on each of its systems. Should Comcast wish to cease
3 providing a channel with primarily Vermont-related programming, it shall
4 demonstrate to the Board how it will meet Vermont subscribers interests
5 in receiving adequate Vermont-related programming through a means
6 other than a specific, dedicated channel and shall require approval from
7 the Board to alter the manner in which this requirement is met.

8
9 Notwithstanding the proposal stated above, DPS is interested in hearing from
10 Comcast whether it can suggest an alternative means of ensuring an adequate level of
11 Vermont-specific program from the outset of the CPG in a manner different from the one
12 we have proposed. The Department's objective is to ensure adequate local/state
13 programming. If this can be accomplished in a way other than guaranteeing a Vermont-
14 specific channel from the outset, we are open to workable alternatives.

15
16 Q. What condition do you recommend to remedy the inadvertent omission of Adelphia
17 Docket 6101 condition 55 from Comcast's proposed CPG?

18 A. Comcast indicated in its response to Interrogatory DPS:PET.3-1 that the omission
19 of this condition was inadvertent. They observed that the condition as originally written
20 was ambiguous and not sufficiently time-bounded. To address the omission and the
21 company's observations, I recommend the Board include an any CPG granted to Comcast
22 under this proceeding the following condition:

23 Comcast shall provide the Board, the Department, affected municipalities,
24 and affected AMOs with complete descriptions of all rebuilds and
25 upgrades at least 90 days prior to the commencement of construction, and
26 in all cases sufficiently in advance to allow time for meaningful comments
27 and possible integration of those comments into the construction projects.

1 In Attachment A to Interrogatory DPS:PET.3.1, Comcast suggested that the
2 condition "establish a specific date by which Comcast must send a letter to the named
3 entities notifying them that the plans have been filed with the Board and Department and
4 will be provided upon request." While I agree with the suggestion to establish a specific
5 deadline for notice, the company's suggested approach provides no actionable
6 information to the municipalities and AMOs unless they affirmatively request it. The
7 alternative language I have suggested resolves the ambiguity pointed out by Comcast
8 while retaining the requirement that the municipalities and AMOs receive actionable and
9 timely information.

10
11 Q. Is there any other concern regarding consistency of Comcast's proposal with EMCO 2?

12 A. Yes, the one remaining concern of the Department is to ensure that, over time,
13 Comcast Vermont customers will have access to new services as they are rolled out in
14 other markets despite the fact that we are a small state with a relatively small customer
15 base. This is an issue that DPS and the Board confronted in the Charter Communication
16 CPG renewal, Docket 6521 and which was resolved in that case by a condition that
17 requires Charter to submit annually (under seal) a business-case analysis for the roll-out
18 of new services that have been offered in other small markets within the region. If the
19 business-case analysis shows it would recover its investment and operating costs in the
20 Vermont market within four years of deployment, Charter must roll the new service out
21 in Vermont.

22 This condition provides a means of ensuring that Vermont is not left behind when
23 a company with a large, national footprint makes investment decisions, and it provides a
24 means for the Board to know going forward that Vermont is receiving the benefit of new
25 technologies that are rolled out elsewhere. For these reasons, DPS recommends any CPG
26 granted to Comcast include the following condition regarding roll out of new services in
27 Vermont:

1 Comcast shall submit to the Board, with a copy to the Department, every
2 second year (no later than January 15th of the year and under seal in
3 accordance with the Protective Agreement approved in this docket), a
4 business-case analysis for the roll-out of new services that have been
5 offered by other Comcast systems within New England to 500,000 or
6 more subscribers, but have not yet been offered by Comcast in Vermont.
7 If the business-case analysis shows that Comcast will recover the
8 incremental capital-investment and operating costs of any such service
9 within four years of completing the initial investment required to deploy
10 the service, Comcast shall be obligated to introduce that service no later
11 than one year from the date that such analysis is submitted.
12

13 Q. Has the company proposed CPG conditions that are relevant to EMCO 2 that the
14 Department recommends be approved as proposed?

15 A. Yes, DPS recommends acceptance of the great majority of conditions proposed
16 by the company, as shown in Exhibit DPS-DLF 1. Those that are specifically relevant to
17 EMCO 2 include: Condition 7, which continues the statewide cable advisory board; and
18 Condition 8, which requires Comcast to invite municipalities annual to meet to talk about
19 community needs.
20

21 Q. Provide your assessment of the petition and proposed CPG in relation to the criterion in
22 30 V.S.A. § 504 (c)(1), "a reasonable quality of service for basic, premium or otherwise,
23 having regard to available technology, subscriber interest and cost."

24 A. Given the limitations discussed earlier concerning the lack of specific plans for
25 Comcast's offerings to consumers following the acquisition, DPS's evaluation of the
26 petition's consistency with this criterion examines Adelphia's current conformity to this
27 standard and Comcast's record in the franchise areas it currently serves.

1 Adelphia's current quality of service can be assumed to meet the criterion, since
2 the current customer service, capability and service offerings merited the granting of a
3 CPG to Adelphia's largest system, Mountain Cable, in 2000. The available evidence
4 concerning Adelphia gives us no reason to believe they have deteriorated below the
5 threshold required by the criterion since the CPG was granted. Upgrades have been
6 completed in all geographic areas where they were required, bringing digital cable, high-
7 speed internet, high definition television, video on demand and other advanced services
8 to the vast majority of Adelphia territory. (Mr. Lackey's testimony discusses DPS's
9 concerns with regard to the one area that is not upgraded to a level that provides adequate
10 opportunity for advanced services, the Newport system.)

11 Consumer complaints to DPS about Adelphia classified as "escalations" dropped
12 from 2001 to 2003 and rose from 2003 to 2004, but remain within acceptable levels and
13 were lower in 2004 than complaints concerning Charter Communications, the next
14 largest cable company in the state. While consumers continue to express dissatisfaction
15 with rates and programming, these matters are generally outside the jurisdiction of the
16 Board and cannot serve as the basis for evaluating Adelphia's service.

17 While the data is not Vermont-specific, JD Power and Associates provides data
18 about the perceptions of major cable companies, including Adelphia, in relation to each
19 other. JD Power's 2004 Residential Cable/Satellite TV Customer Satisfaction Study
20 shows that Adelphia is rated 617 on a 1,000 point scale in customer satisfaction. This
21 compares to an industry average of 664 and is identical to Charter's rating. (Charter and
22 Adelphia, unfortunately, are both at the bottom of the companies whose ratings are
23 reported. Adelphia scored two ("the rest") out of five ("the best") possible points on
24 overall satisfaction, performance & reliability, billing, and image, and three ("does not
25 really stand out") on cost of service, offerings & promotions, and customer service.¹⁵
26 While these scores are not outstanding, they do not deviate sharply from industry
27 averages. The American Customer Satisfaction Index (ACSI) rating of customer

¹⁵Response Attachment A.DPS:PET.1-65a.

1 satisfaction with various industries shows that, in general, customer satisfaction with the
2 cable industry lags behind many other industries including energy utilities, the US Postal
3 Service, both wireline and wireless telephone service, hotels, food service, and health
4 care.

5 On the basis of the evidence about Adelphia's "quality of service for basic,
6 premium or otherwise, having regard to available technology, subscriber interest and
7 cost," it is reasonable to conclude that continuation of the current service, as Comcast has
8 promised upon acquisition, meets the criterion. This analysis is relevant for two reasons.
9 First, Comcast has indicated that it will make no changes on day one after acquisition,
10 therefore, at least initially, Comcast customers will be receiving exactly the same service
11 by the same people that they received prior to the acquisition. Second, while Comcast has
12 indicated it will make changes that are relevant to customer service going forward, such
13 as a likely change to its own call centers and some changes to the way it handles repair
14 and installation, the physical plant delivering service will remain that which currently
15 serves Adelphia customers.

16 More important than an evaluation of Adelphia's current service is analysis of
17 Comcast's service in territories it currently operates. This evaluation provides a
18 reasonable proxy for what Vermont can expect from the company, given the
19 consolidation of call centers and other resources that are a part of Comcast's method of
20 delivering service in other franchises. Throughout its existing franchise areas, Comcast
21 provides customer service 24 hours per day, seven days per week through multiple call
22 centers that operate through centralized call processing as a "virtual call center."¹⁶
23 Comcast reports a twelve-month, year-to-date system reliability average for the New
24 England region of 99.9879 percent.

25 Comcast offers various evidence that service will improve after acquisition of
26 Adelphia's Vermont territory. The chief strength cited is that service will be more reliable
27 and higher quality because Comcast will have access to capital necessary to complete

¹⁶Response to DPS:PET.3-13.

1 line extensions, upgrade existing network and roll out new services. Comcast specifically
2 cites in-house answering of video-related calls, three levels of technical support, the
3 presence of five call centers in New England to ensure prompt service, and employee
4 training through "Comcast University."¹⁷

5 Comcast has offered as a strength that it has brought most customer service in-
6 house rather than contracting for phone answering. This does not appear to be an
7 advantage over the current state of affairs with Adelphia, which answers its own calls as
8 well, with many Vermont calls answered in the Burlington call center. Comcast has not
9 committed to retaining the Burlington call center, but has indicated it will evaluate
10 whether the call center should be retained.

11 The ratings of Comcast customer satisfaction, like Adelphia's are slightly below
12 industry averages. JD Power's 2004 Customer Satisfaction Study gives them 633 out of
13 1,000 points compared to the industry average of 644. Ratings of various dimensions of
14 customer satisfaction are slightly better than Adelphia's, with the ratings of three ("does
15 not really stand out") out of five in all categories: overall satisfaction, performance &
16 reliability, cost of service, billing, image, offerings & promotions, and customer
17 service.¹⁸

18 ACSI provides an index of customer satisfaction across a wide variety of
19 industries and companies.¹⁹ ACSI's May 17, 2005 first quarter scores for Utilities,
20 Transportation & Warehousing; Information; Health Care & Social Assistance;
21 Accommodation & Food Service²⁰ show that cable and satellite TV companies received
22 an average score of 61 points on a 100 point scale. Comcast's score fell slightly below the

¹⁷Interrogatory DPS:PET.3-22.

¹⁸ It is interesting to note that Direct TV and DISH Network both scored five of five points in all categories. Among the cable providers, only the regional providers (WOW! And Brighthouse) and Cox received five points in any category. This relatively weak showing of the cable companies, particularly the larger national providers, raises questions about the strategic choices of these companies and their match with consumer preferences.

¹⁹ A description of the methodology used to derive the index is available at http://www.theacsi.org/what_it_measures.htm.

²⁰Response Attachment A.DPS:PET.1-65b.

1 industry average at 58. (The industry leader, was Cox at 63, led by EchoStar and
2 DIRECTV at 68 and 67 respectively.) Although Comcast's scores are not outstanding, it
3 is encouraging to note that they increased in 2005 by 3.6 percent over the previous
4 quarters. By comparison, Charter, the other cable company serving a significant part of
5 the Vermont market, falls slightly below Comcast's scores.

6 Comcast has indicated that it had some customer service challenges in connection
7 with its acquisition of AT&T Broadband in 2002. They have described extensive training
8 programs and focused efforts to improve customer service, including "Comcast
9 University" and the "Think Customer First" initiative. They also cite the in-sourcing of
10 customer service as corrective actions undertaken in recent years.²¹

11 The evidence provided by Adelphia and Comcast is not all positive. It would be
12 preferable to be considering a petition by a company that appeared at the top of the
13 customer satisfaction indexes. That said, Adelphia's system is currently providing service
14 that appears to meet the requirements for "a reasonable quality of service for basic,
15 premium or otherwise, having regard to available technology, subscriber interest and
16 cost." The system is capable of providing a full range of advanced services and does
17 provide those services today. This is the system infrastructure and programming that will
18 be provided to consumers following acquisition. The acquiring company has provided the
19 same services and more in its other franchise territories. The quality of service issues of
20 both Adelphia and Comcast do not fall outside the norm of reasonableness, nor far below
21 industry average. Taking this evidence together, DPS concludes that, with conditions
22 discussed below, Comcast meets the requirements of 30 V.S.A. § 504(c)(1).
23

24 Q. Has Comcast proposed CPG conditions that are designed to ensure it meets the
25 requirements of 30 V.S.A. § 504(c)(1)?

26 A. Yes, Condition 9 of the proposed Comcast CPG specifically assures consistency
27 with 30 V.S.A. § 504(c)(1) and should be accepted as proposed.

²¹Interrogatory DPS:PET.3-22.

1 In addition, Comcast has proposed in Condition 41 to adhere to FCC customer
2 service standards and to maintain and adhere to a service quality plan to be negotiated
3 with DPS. The testimony of Mr. Truman recommends a service quality plan to be
4 adopted in connection with this docket. With the modification he proposes, Condition 41
5 should be accepted as a further means of ensuring Comcast meets the requirements of 30
6 V.S.A. § 504(c)(1).

7
8 Q. Are any additional conditions, not proposed by Comcast, needed to assure Comcast
9 meets the criterion in 30 V.S.A. § 504(c)(1)?

10 A. Yes, I recommend two additional conditions. One deals with the lack of
11 information the Board and Department face about Comcast's customer service going
12 forward. The other concerns the language Comcast uses to describe its two lowest tiers of
13 service.

14 The first condition I recommend concerns how Comcast informs regulators about
15 changes in the delivery of customer service. Comcast is expected to integrate Vermont
16 customer service call handling and installation and repair with its existing system outside
17 Vermont following acquisition, but cannot yet describe the plans for doing so. As a
18 result, Vermont is being asked to issue a certificate of public good for eleven years
19 without knowing precisely how service will be delivered in even the short-range beyond
20 the acquisition. We understand the reasons the petitioners have offered for this
21 uncertainty, but need some means of being informed and having input into major changes
22 in service delivery before they are implemented and the means to monitor and evaluate
23 them after they are implemented.

24 To address this challenge DPS proposes the following condition be included in
25 any CPG issued to Comcast:

26 Comcast shall discuss major changes in the delivery of customer
27 service and other aspects of operations, such as installation and
28 repair and system architecture, with the Board and Department
29 prior to finalizing plans and in sufficient time for meaningful input

1 from regulators. Comcast shall inform the Board and Department
2 in writing of major changes in the delivery of customer service and
3 other aspects of operations at least 30 days prior to
4 implementation.
5

6 The condition is intended to ensure that regulators are aware of major customer
7 service changes throughout the life of the CPG. I considered limiting the effective time of
8 the provision to the first three years and concluded that it was a reasonable condition
9 throughout the CPG for a company that serves such a large proportion of the Vermont
10 market. The Department receives consumer calls and inquiries about even small changes
11 in Adelphia's customer service delivery. As Adelphia has demonstrated with good
12 communication with regulators in the recent past, having information ahead of changes in
13 service delivery, even if they are not tariff related, enables the Department to work
14 cooperatively with the company to answer consumer inquiries.

15 The second condition I recommend concerns references to the term "basic." Other
16 cable companies that have received CPGs in recent years are bound by a condition that
17 prohibits the use of the term "Basic," alone, in a phrase, or as an abbreviation, in
18 reference to any service tier other than the lowest level of cable service that a subscriber
19 can select. This condition has been included in CPGs because the term is understood in
20 plain English to mean a no-frills package at a low price. If the label "basic" is used to
21 describe tiers of service beyond the lowest tier, consumers are sometimes misled into
22 believing that they are getting the lowest-priced package available when in fact they have
23 been "up-sold." Because "basic" has a specific meaning in the context of federal cable
24 law, the most straightforward way to deal with the issue of customer communication
25 about the lowest tier is by prohibiting the use of the term "basic" in connection with other
26 services. This is an important consumer issue in that consumers do complain that they
27 were not informed of all their choices. Cable companies, like other businesses, have an
28 incentive to sell the consumer the most expensive package the consumer is willing to
29 buy. That incentive may interfere with the provision of complete information about

1 choices. The proposed CPG condition helps to protect against the negative consequences
2 of these incentives.

3 In addition to the sound policy reasons to include the "basic" CPG condition,
4 there is an additional, more practical reason, which is competitive neutrality. Because
5 most of the cable companies in Vermont, including Adelphia's potential competitor,
6 Burlington Telecom, whose cable CPG is currently pending Board disposition of a
7 Proposal for Decision, are subject to the condition, it would be inconsistent with
8 competitive neutrality to subject Comcast to different conditions, or to omit relevant
9 conditions entirely.

10 Comcast has proposed a criterion that is relevant to the "basic" issue. Condition
11 55 requires a notice to customers at the time of installation of the availability of basic
12 service as required by 47 C.F.R. § 76.1618. While this condition is valuable and should
13 be incorporated, it is not a substitute for the previously discussed condition because, by
14 the time the consumer sees this information, if indeed the consumer reads the notice, the
15 service has already been ordered and installed.

16
17
18 Q. Provide your assessment of the petition and proposed CPG in relation to EMCO criterion
19 6, "consumer policies, particularly re: complaints and problems."

20 A. As in the evaluation of other criteria, the basic framework of consumer policies,
21 particularly regarding complaints and problems, on day one following acquisition will be
22 the one now in place for Adelphia, which meets this criterion.

23 Evaluation of Comcast's customer policies and handling of complaints and
24 problems included a review of policies, practices and organization in other New England
25 states. DPS reviewed Comcast's training of customer service representatives, areas
26 covered by customer service policies, and track record with other regulators in
27 responding to consumer complaints. No information gleaned from this review suggests
28 that Comcast is unable to meet the criterion in question, provided adequate conditions are
29 included in its CPG.

1 Q. Has Comcast proposed CPG conditions that will ensure Comcast meets EMCO 6?

2 A. Yes, Comcast has proposed a number of criteria in that will ensure its Vermont
3 operation is consistent with EMCO 6. These conditions should be included in any CPG
4 issued by the Board as proposed, except as otherwise recommended below. The condition
5 numbers in the following section refer to the numbering in Comcast's proposed CPG filed
6 with the Board on July 22, 2005.

7 Condition 1 concerns employing a Regulatory Affairs Manager to oversee
8 compliance with Vermont regulation. This condition should be modified to remove
9 reference to the terms which may be specific only to Adelphia. The condition as
10 proposed refers to a "Regional Manager," which may or may not be a position that is part
11 of Comcast's ultimate management structure for Vermont. The condition can be made
12 generic as follows:

13 For the duration of this Certificate, Comcast shall employ a dedicated
14 Regulatory Affairs Manager, whose duties are separate from other
15 management duties and whose responsibility shall include oversight of
16 Comcast's compliance with Vermont statutes, rules, orders and other
17 regulations governing cable operators.

18
19 Experience with a person dedicated to regulatory affairs in the context of
20 Adelphia and other large companies shows that it is particularly critical to aiding a
21 company that operates in many states in adhering to state-specific conditions. This is
22 particularly true because Vermont is so small and is not, therefore, a driver of national
23 policies.

24 Condition 42 concerning complaint reporting is relevant to EMCO 6 and is
25 discussed in the testimony of Mr. Truman.

26 Conditions 44-46, and Condition 54 concern subscriber notices. These three
27 conditions are relevant to EMCO 6 in that they include information to consumers about
28 how to register complaints about service with the company and with the Board and
29 Department, and also about any PEG access entity. The conditions should be accepted as

1 proposed. It should be noted that, in Condition 44, Comcast proposed to use the form of
2 notice previously negotiated by Adelphia. I anticipate, however, that Comcast may need
3 to make changes to the notice as a result of operational changes after acquisition. If this
4 happens, the company should be required to renegotiate the notice form as needed. This
5 is not meant to include details such as Comcast's address, but rather substantive changes.

6 Condition 50 deals with the readability of notices. It provides an objective
7 standard for judging reading level and requires readable type sizes. I note that there may
8 be a conflict between Condition 44, in which Comcast proposes to use the notices
9 previously negotiated with Adelphia, and Condition 50. Condition 50 was first included
10 in Charter Communications' CPG renewal in Docket 6521. As such, Adelphia's notice
11 may not meet the readability criterion. If this is the case, the layout of the notice required
12 under Condition 44 will have to be modified to meet Condition 50. With this caveat on
13 the record, DPS recommends acceptance of Condition 50 as proposed.

14 Condition 52 requires Comcast to provide contact information for DPS, along
15 with appropriate advice concerning dispute resolution, on its bills and annual notices.
16 This condition ensures consumers receive essential information about assistance with
17 complaint resolution and should be included as proposed in any CPG issued to Comcast.

18 Condition 53 concerns ensuring that Comcast is consistently accurate in the
19 information it provides to consumers about the Board as the local franchise authority.
20 Because most local franchising authorities are municipalities, Adelphia made the mistake
21 a number of years ago of listing town selectboards as the local franchising authority on
22 notices sent to its customers. The original condition on which Condition 53 is based was
23 designed to prevent this practice. The condition as proposed by Comcast needs minor
24 modification to conform it to the present circumstances. DPS proposes the following
25 language (shown here as an edited version of Comcast's proposal, with DPS proposed
26 additions underscored and deletions struck through):

27 Comcast shall ~~revise~~ ensure that its "complaint procedure," and any other
28 relevant sections of the annual notice provided to consumers in
29 compliance with 47 C.F.R. § 76.102(b), ~~to provide specific reference to~~

1 identifies the "Vermont Public Service Board" as the local-franchising
2 authority for all Vermont systems. At no time shall Comcast represent to
3 customers, either in writing or orally, that the municipalities are the local
4 franchising authorities in Vermont.

5
6 Q. Provide your assessment of the petition and proposed CPG in relation to the requirement
7 of 30 V.S.A. § 504(c)(3) for "a competent staff sufficient to provide adequate and prompt
8 service and to respond quickly and comprehensively to customer and Department
9 complaints and problems."

10 A. The evaluation of Comcast's proposal in relation to this criterion is largely
11 covered in the analysis of 30 V.S.A. § 504(c)(3) above. I will briefly recap the relevant
12 evidence. Initially the existing Adelphia system, which has been determined to meet the
13 requirements of the statute, will provide the service. When switched to Comcast, there is
14 no reason to believe, based on the infrastructure Comcast will have acquired and its track
15 record in other franchise territories that it will not meet the criteria. Comcast provides
16 customer service by phone 24 hours a day, seven days a week. It maintains a network for
17 call centers that ensure prompt call answering, as well as a system for providing
18 installation and repair. Available measures of customer service and service quality, as
19 discussed above, fall below but near the industry averages. Since Comcast will be relying
20 on Adelphia's existing customer service resources, including particularly, the Burlington
21 call center upon acquisition, we can expect they will have time to evaluate call volume
22 and determine how to integrate Vermont calls into their work load going forward. Taken
23 together, the evidence leads DPS to conclude that, with conditions discussed below,
24 Comcast meets the requirements of 30 V.S.A. § 504(c)(3).

25
26 Q. Has Comcast proposed CPG conditions that will ensure Comcast meets the requirements
27 of 30 V.S.A. § 504(c)(3)?

28 A. Yes, Comcast has proposed two conditions that provide assurance of service is
29 consistent with 30 V.S.A. § 504(c)(3).

1 Condition 9 is already discussed above under 30 V.S.A. § 504(c)(1), and is also
2 relevant to this criterion.

3 Condition 41, which provides for a Service Quality Plan and ensures compliance
4 with FCC and other customer service standard is particularly relevant to this criterion,
5 and is discussed in the testimony of Ben Truman.

6 In addition, the conditions dealing with complaint handling, discussed in the
7 context of EMCO 6 above, are relevant to 30 V.S.A. § 504(c)(1).
8

9 Q. Does the proposal meet the requirement of 30 V.S.A. § 504(c)(5) for "reasonable rules
10 and policies for line extensions, disconnections, customer deposits and billing practices"?

11 A. As with other criteria discussed above, Comcast proposes to provide service on
12 day one without changes from Adelphia's current operation. With respect to this phase of
13 operation, there is no evidence to suggest a failure to meet the criterion in question.

14 Comcast's track record in other jurisdictions, likewise, provides no evidence to
15 suggest it will not or cannot comply with the requirement for reasonable rules and
16 policies for line extensions, disconnections, customer deposits and billing practices.
17 Information provided from other jurisdictions shows no evidence of enforcement actions
18 by franchising authorities that suggest a problem with adhering to local and/or state rules
19 concerning cable service. With the conditions discussed below, DPS concludes that
20 Comcast meets the requirement of 30 V.S.A. § 504(c)(5). My testimony notwithstanding,
21 Mr. Lackey addresses one issue concerning rules and policies for line extensions,
22 specifically concerning minimum qualifying density, that must be addressed in order to
23 reach the conclusion I have stated.
24

25 Q. Has Comcast proposed CPG conditions that will ensure Comcast meets the requirements
26 of 30 V.S.A. § 504(c)(5)?

27 A. Yes, a number of conditions proposed by Comcast provide assurance of
28 consistency with 30 V.S.A. § 504(c)(5).

1 Condition 1, the requirement to employ a Regulatory Affairs Manager, is
2 important to this criterion in that ensures Comcast remains focused on Vermont-specific
3 policy requirements.

4 Condition 6, prohibiting Comcast from itemizing the gross revenue tax on
5 subscriber bills unless allowed to do so by Vermont law ensures compliance with this
6 particular provision, which as been a matter of regulatory action with past regulated
7 companies.

8 Condition 13 specifically requires Comcast to keep its deposit and disconnection
9 policies consistent with Public Service Board Rules 3.200, 3.400 and 8.000.

10 Condition 48 requires outage credits be provided without customer request if the
11 outage is known to Comcast, and requires consistency with PSB Rule 8.343 regarding
12 outage credits.

13 Condition 51 requires that customers receive a clear and understandable
14 description of terms, conditions, rates and charges for all requested services at the time of
15 the at the time of the service order. This condition has the benefit of providing consumers
16 with comprehensive information about their services, enabling them to exercise the rights
17 assured to them by the PSB Rules.

18 Condition 56 requires compliance with Federal rules on the timeliness of issuing
19 refunds.

20
21 Q. Does DPS have any other concerns with regard to the issue of Comcast's commitments
22 regarding customer service policies?

23 A. Yes, there is one other issue relevant to this criterion I would like to raise.
24 Comcast has intimated that it may seek in the future changes in CPG conditions
25 regarding customer policies to which it has committed in this proceeding. While we
26 agree that circumstances may sometimes warrant a request for changes in a cable CPG
27 during its eleven year life span, DPS is concerned about the possible meaning of
28 Comcast's statement in its response to Interrogatory DPS:PET.1-6 that, "[o]ver time, as
29 Comcast gains experience in Vermont, it might seek modifications to the CPG...." It

1 would be troubling in terms of the current petition if Comcast intended to accept the vast
2 majority of conditions now applicable to Adelphia in order to obtain a CPG, but then to
3 create extensive regulatory process to seek modification of its commitments. We note
4 that Comcast's response to DPS:PET.1-63 continues, "Comcast does not at this time have
5 plans to seek additional modifications to the customer-service provisions and
6 obligations." We hope that the Board and Department can take this to mean that Comcast
7 is committed to the conditions it has agreed to in the current proceeding and will not seek
8 amendment lightly.

9
10 Q. Does the proposal meet the requirement of 30 V.S.A. § 504(c)(4), "unless waived by the
11 Board, an office which shall be open during usual business hours, have a listed toll-free
12 telephone number so that complaints and requests for repairs or adjustments may be
13 received?

14 A. Adelphia's offices are the ones that initially will determine whether Comcast
15 meets this criterion. Adelphia maintains a call center that provides customer service for
16 billing, repair and all other issues 24 hours per day, seven days per week, reachable by
17 toll-free number. Adelphia maintains seven offices around the state that are open to the
18 public during regular business hours.²² Recently Adelphia closed its Bennington office to
19 walk-in traffic based on traffic studies that showed limited usage. Adelphia also contracts
20 with Hannafords Markets and certain locations of Chittenden Bank to receive payments.
21 Payments at these locations are treated as if received at local offices. Comcast has stated
22 it will maintain Adelphia's offices upon acquisition. Like Adelphia, they will have the

²²Exhibit L of the Petitioners' June 20, 2005 petition filing includes a list of eight offices. Included among these with hours of operation is the Bennington office, which DPS understands has been closed to walk-in traffic. Since customer service calls are handled by regional call centers, not local offices, this appears to mean that, for all intents and purposes, the Bennington office is not "an office open during regular business hours..." Based on this evidence, DPS concludes Adelphia has seven, not eight offices that meet the requirement of 30 V.S.A. § 504(c)(4).

1 flexibility to make changes to their offices (open new ones, close existing ones, alter
2 hours, etc.) as long as they continue to meet the criterion of § 504(c)(4).²³

3
4
5 Q. Has Comcast omitted from its proposed CPG any condition dealing with local offices to
6 which Adelphia is currently subject?

7 A. Yes, Comcast has omitted the conditions requiring the company to keep open the
8 offices in Brattleboro and Springfield. They similarly do not propose conditions keeping
9 St. Albans and Lebanon, New Hampshire offices open.

10
11 Q. Should the Board accept this omission and will Comcast be able to meet the requirements
12 of 30 V.S.A. § 504(c)(4) without these conditions.

13 A. Regardless of whether or not a particular office is protected by a CPG condition,
14 all cable operators must meet the requirement of 30 V.S.A. § 504(c)(4). The requirement
15 was written before the consolidation of the cable industry when its primary importance
16 was to ensure reasonable access and business hours. Today the national cable companies
17 like Adelphia and Comcast operate call centers that are accessible to consumers 24 hours
18 a day, seven days a week. While this does not eliminate the need for local offices, the call
19 centers provide a substantial part of customer service for these companies, and go a long
20 way toward meeting the requirements of 30 V.S.A. § 504(c)(4) for "an office which shall
21 be open during usual business hours" and completely satisfy the requirement for "a listed
22 toll-free telephone number so that complaints and requests for repairs or adjustments may
23 be received."

24 With customer service largely fulfilled through the call center toll-free number,
25 customers' other interest in local offices is primarily to make payments. Adelphia's

²³Four offices are specified in Adelphia's existing CPGs: Brattleboro, Springfield, St. Albans and in/around the Lebanon, NH area, according to Exhibit L of the Petitioners' June 20, 2005 petition filing. The remaining offices can be changed at any time by Adelphia, as in the case of the Bennington office.

1 arrangements, which will be continued by Comcast, for payment agents at banks and
2 supermarkets helps to satisfy this interest.

3 Local offices remain an important part of the mix for some customers who simply
4 are accustomed to using that resource, and in the occasional instance where it takes a
5 face-to-face meeting to solve a problem.

6 Taking these factors together, DPS concludes that it is possible for a cable
7 company to meet the requirements of 30 V.S.A. § 504(c)(4) without necessarily
8 specifying particular offices. Comcast should have the flexibility to determine the
9 optimal mix of walk-in offices and other means of providing customer service, and
10 should not be locked into CPG conditions that eliminate their flexibility or require a
11 petition to the Board before office arrangements can be altered. The condition I
12 recommended earlier requiring Comcast to notify regulators before making major
13 changes in customer service will enable DPS and the Board to respond if Comcast
14 proposes to close an office and it appears that doing so will threaten consumers and the
15 company's ability to comply with its obligations. At that time, regulators have the
16 necessary enforcement tools to address any problem as it may arise.

17
18 Q. Provide your assessment of the petition and proposed CPG in relation to the criterion in
19 30 V.S.A. § 504(b)(4), the prohibition on discrimination among customers of basic.

20 A. Comcast has committed to provide its basic cable service at uniform rates, in
21 accordance with applicable law.²⁴ DPS has no evidence to suggest this commitment is
22 inadequate to comply with the requirement of 30 V.S.A. § 504(b)(4). With regard to
23 senior discounts, which are permitted under federal law, Comcast has stated it has no
24 plans to make changes to existing senior discounts.²⁵ Since Adelphia does not offer a
25 senior discount, we take this to mean Comcast has no plan to offer a senior discount.
26 While we do not believe the Board can require senior discounts, DPS believes such a

²⁴Testimony of Stephen Hackley for the petitioners, June 20, 2005, page 10.

²⁵Response to Interrogatory DPS:PET.1-68.

1 discount is desired by older consumers and would serve the public interest. We note
2 further that Comcast does provide such a discount in some of its systems in Connecticut
3 and Massachusetts. Comcast has indicated that it does intend to maintain the agreement
4 with the City of Burlington through which the city provides a cable discount to seniors.²⁶
5 Because of the way that arrangement is structured following Docket 6101, it does not
6 constitute a discount offered by the cable company.

7 In summary, DPS has no reason to challenge Comcast's conformance with the
8 requirements of 30 V.S.A. § 504(b)(4).
9
10

11 Q. Does that conclude your testimony?

12 A. Yes it does.
13

²⁶Response to Interrogatory DPS:PET.2-22.